

January 15, 2007

SB 26

Why minerals get severed: Excluding the Federal Government severing minerals at patent, minerals are typically severed from the fee surface when someone inherits them, purchases some or all of the minerals, or reserves them when they sell the surface. It is not uncommon for one sibling to get the surface to continue the place and for other siblings to get minerals as partial compensation. Sales of minerals are for a variety of reasons one common one being to raise capital to keep from losing the farm/ranch. When a farm/ranch is sold it is common for the seller to reserve some or all of the minerals. The price of the farm/ranch is reduced accordingly.

Merchantable Title: Minerals are a significant part of the title to a property. One of the stated purposes of this Bill is to address the impairment of marketable title that dormant minerals cause. In fact, under the current system un-locatable mineral owners cause no title problems that affect merchantable title and it is very rare that mineral owners or their heirs cannot be located. The existing Statute provides for, among other remedies, that the District Court can act as a Trustee to handle the "unclaimed property". Unclaimed property can be identified by going to the DOR website. This is a proven, clean and clear process that works very well. The process described in this Bill would have the opposite affect on marketable title putting a cloud on minerals brought into a system that involves filings that will be inaccurate so they will not be reliable. Most people do not know exactly how much they own, how they hold title or the exact legal description of their property.

ND: SB 26 has some of the characteristics of the ND dormant mineral Statute, which was enacted about 20 years ago. The rather simple and straightforward ND Statute has not worked well or as intended. According to ND title attorneys, and professionals that have testified in ND court, the ND dormant mineral law has put clouds on title, delayed drilling and generated expensive litigation. SB 26 provides for those same title problems and many, many more problems with its proposed system of notice, filing, fines and litigation.

Taking: At the end of the process the Bill calls for "dormant minerals" to go to the surface owner. Although we disagree with the principal of taking for the reasons stated herein, we believe that minerals should be treated like any other dormant property and should go to all people of the State of MT and managed by the DOR. This Bill gives minerals to people who knowingly did not pay for them or previously sold them. One simple solution would be to place the minerals at auction, like a Sheriff's sale, with the proceeds going into the general fund.

Overburdens County/DNRC: Administration and continual training, to old and new employees, to implement and maintain this circuitous Bill will be costly, burdensome, and based upon other States' experiences, unattainable.

Unfair Targets: Many of the mineral owners targeted for punishment by this Bill will be elderly and charities who are poorly equipped to be aware of this Bill and to address this complicated filing procedure. The same would be true of anyone living out of the State of MT. This Bill will unfairly cause Trusts, charities and individuals to abandon their financial stake in their minerals and places a hammer over all owners' head through fines and naming them in litigation. Further every surface owner with mineral rights should be very concerned about the specifics of this Bill and their being subjected to the fees, fines and litigation referenced in the Bill. This Bill will significantly affect current farmers/ranchers' future desire/ability to pass minerals to their kids, sell their minerals to raise cash, or reserve minerals.

Fees and Fines: Besides being unfair and punitive, this part of the bill needs further definition as to what constitutes a fee and an infraction. Does a scattered 1,000 gross acres containing 10 tracts with 10 net mineral acres that are mis-filed/noticed constitute one fine, 10 or 1,000?

Royalty Owners: Although the Bill does not address the issue, people with royalty interests who do not own the minerals may be subject to the same taking regardless of their marketable title or whether they can be located.

Split estates. Split estates are a divisive issue. This Bill takes from mineral owners and gives to surface owners in a too complicated process. This is not an equitable or workable solution. The solution does not lie with dormant mineral legislation but with a list of protocols that address surface access and severed minerals. At least 12 States have already enacted split estate protocols to alleviate and minimize conflicts between companies and surface owners. WY was one of the most recent, enacting theirs in 2002. The SB 790 split estates Interim Study Commission found the same thing these other States already found when they investigated the issue and looked for examples of what is working. Although MT is not perfect it is a great example of what works and is a cited model that other States are attempting to follow on this complicated issue.

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